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Smith+Nephew

June 15, 2001

John M. Cuckler, M.D.  
3410 East Briarcliff Road  
Birmingham, AL 35223

Via Certified Mail

Re: Reissue Application for U.S. Patent No. 5,931,870; Our File No. 01-31-0735

Dear Dr. Cuckler:

Smith & Nephew recently realized that the claims of the above referenced patent, which covers our Contour Ring acetabular cup, contain certain structural limitations which unnecessarily narrow the scope of coverage. In order to broaden the patent to better protect our product line, we have decided to file a reissue application in the U.S. Patent and Trademark Office. Enclosed for your review are copies of the following documents prepared by our outside patent counsel for this purpose:

1. Reissue Application Declaration by the Inventor (the "Declaration"); and
2. An Amendment to be filed in the Patent Office.

Also enclosed for your convenience is a copy of the '870 patent as originally issued. The enclosed Amendment sets forth the claims which we intend to add to this patent through the reissue process. The original claims all contain the term "buttress" to describe a certain structural feature of the invention, which could be interpreted more narrowly than we would prefer in order to adequately protect our Contour Ring from copying by competitors. Accordingly, the claims contained in the Amendment cover the product using broader terms such as "containing portion" and "lip" which should not be subject to the same narrow interpretation. Please read the new claims carefully and, if you agree that they accurately describe the invention covered by this patent, sign the enclosed Declaration as indicated, including your residence and date of signature in the spaces provided. Please return the originally signed document to me.

Do not hesitate to contact me if you have any questions or comments whatsoever regarding this matter. My direct telephone number and e-mail address are shown above. Thank you very much for your cooperation.

Very truly yours,

  
William B. Clemmons, Jr.

Enclosure

cc: Brian Austin

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July 20, 2001

John M. Cuckler, M.D.  
3410 East Briarcliff Road  
Birmingham, AL 35223

FEDERAL EXPRESS

Re: Reissue Application for U.S. Patent No. 5,931,870; Our File No. 01-31-0735

Dear Dr. Cuckler:

On June 15, 2001, I forwarded to you a copy of the Reissue Application we intend to file in connection with the above referenced U.S. patent, and requested that you review the Declaration and Amendment and let me know if you have any questions or comments. I would greatly appreciate it if you would let me know if you feel any changes are necessary, and, if not, return the signed Declaration to me at your earliest possible convenience. Our deadline for filing this Reissue Application is August 3, 2001, so it is imperative that you return the signed Declaration to me as soon as possible.

Please also keep in mind that this application is highly confidential, and should not be shared with or disclosed to anyone outside Smith & Nephew.

Thank you very much for your cooperation.

Very truly yours,

  
William B. Clemmons, Jr.

WBC/pjs

Legal Department

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Patent Attorney

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**Smith+Nephew**

July 30, 2001

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Birmingham, AL 35294

Via Fax 205-975-5997

Re: Reissue Application for U.S. Patent No. 5,931,870; Our File No. 01-31-0735

Dear Dr. Cuckler:

Thank you for your letter of July 5, 2001 regarding the reissue application we intend to file for the Contour Ring patent. In response to your question, the phrase "at least one fixation member" comprises a plurality of fixation members" first appears in claim 48, which is dependent from claim 47, a new independent claim which broadly covers our product. Claim 47 defines the product as having "at least one fixation member", and the language you noted in claim 47 restricts the phrase "at least one" to include "a plurality". The difference in coverage provided by this language may be slight, but it is a common drafting practice for patent attorneys.

You also indicated that the word "buttress" accurately describes our Contour Revision Ring. While I certainly do not disagree that "buttress" is an acceptable term, our concern is that it may be construed as having a narrower scope than the term "containing portion" as contained in the new claims. The difference between these terms may not appear significant on the surface, but could become important if we ever need to assert this patent against an infringer.

If the above explanation meets your approval, please sign the documents I provided with my previous letter and return them to at your earliest convenience. Do not hesitate to contact me if you have any further questions or comments.

Very truly yours,

  
William B. Clemmons, Jr.

WBC/pjs